

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS

No. 05-1108V
Filed: September 17, 2008

NOT TO BE PUBLISHED

PAMELA SMITH and RONALD SMITH, *
as the Parents and Natural Guardians *
of TAKASHI JESSE SMITH, an Infant, *
*
Petitioners, *
* Dismissal
v. *
*
SECRETARY OF THE DEPARTMENT *
OF HEALTH AND HUMAN SERVICES, *
*
Respondent. *

DECISION¹

On September 15, 2008 petitioners filed a Motion for Judgment on the Record. Petitioners candidly “acknowledge that they do not believe they can prove causation at this juncture.” See Motion for Judgment on the Record, filed September 15, 2008. Given the reality of their lack of medical proof, petitioners requested an abbreviated decision to this effect. Id. Respondent did not have an opportunity to respond to petitioner’s motion, and the undersigned sees no reason to wait for a response.

To receive compensation under the National Vaccine Compensation Program (hereinafter “the Program”), petitioners must prove either 1) Takashi Jesse Smith suffered a “Table Injury” - i.e., an injury falling within the Vaccine Injury Table - corresponding to one of her vaccinations, or 2) that Takashi Jesse Smith suffered an injury that was actually caused by a vaccine. See 42

¹The undersigned intends to post this decision on the United States Court of Federal Claims’s website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). As provided by Vaccine Rule 18(b), each party has 14 days within which to request redaction “of any information furnished by that party (1) that is trade secret or commercial or financial information and is privileged or confidential, or (2) that are medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy.” Vaccine Rule 18(b). Otherwise, “the entire” decision will be available to the public. Id.

U.S.C. §§ 300aa-13(a)(1)(A) and 300aa-11(c)(1)². The undersigned's examination of the filed medical records did not uncover any persuasive evidence that Takashi Jesse Smith suffered a "Table Injury". Further, the records do not contain a medical expert's opinion or any other persuasive evidence indicating that Takashi Jesse Smith's illness was vaccine-caused.

Under the Act, a petitioner may not be given a Program award based solely on the petitioner's claim alone. Rather, the petition must be supported by either medical records or a medical opinion. § 300aa-13(a)(1). In this case, because the medical records do not support petitioners' claim, a medical opinion must be offered in support. Petitioners, however, have offered no such opinion and have indicated that they cannot provide an expert opinion.

Accordingly, it is clear from the record in this case that petitioners have failed to demonstrate that Takashi Jesse Smith suffered a "Table Injury" or that her injuries were "actually caused" by a vaccination. Thus, the court must dismiss this case for want of proof. The Clerk shall enter judgment accordingly.

IT IS SO ORDERED.

s/ Gary J. Golkiewicz
Gary J. Golkiewicz
Chief Special Master

²The Program comprises Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755, codified as amended, 42 U.S.C. §§ 300aa-10 et seq. (West 1991 & Supp. 2002) (hereinafter "Vaccine Act" or "the Act"). Hereafter, individual section references will be to 42 U.S.C. §§ 300aa of the Act.